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2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 STEWART RIGGS,

7 Plaintiff,

No. C11-5627 BHS/KLS

v.

8 DEPARTMENT OF CORRECTIONS,
9 OFFICER BAKER, and SGT. JACKSON,

ORDER TO AMEND OR SHOW CAUSE

10 Defendants.

11 This matter has been referred to Magistrate Judge Karen L. Strombom pursuant to 28
12 U.S.C. § 636(b)(1), Local Rules MJR 3 and 4. Under separate Order, Plaintiff has been granted
13 leave to proceed *in forma pauperis* (IFP). The Court has reviewed Plaintiff's civil rights
14 complaint. ECF No. 1. At this time, the Court will not serve the complaint because it is
15 deficient. Plaintiff shall be given an opportunity to submit an amended complaint, as explained
16 below.

18 **DISCUSSION**

19 Under the Prison Litigation Reform Act of 1995, the Court is required to screen
20 complaints brought by prisoners seeking relief against a governmental entity or officer or
21 employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint
22 or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that
23 fail to state a claim upon which relief may be granted, or that seek monetary relief from a
24 defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b)(1), (2) and 1915(e)(2); See
25 *Barren v. Harrington*, 152 F.3d 1193 (9th Cir. 1998).

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1 A complaint is legally frivolous when it lacks an arguable basis in law or fact. *Neitzke v.*
2 *Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir.
3 1984). The Court may, therefore, dismiss a claim as frivolous where it is based on an
4 indisputably meritless legal theory or where the factual contentions are clearly baseless. *Neitzke*,
5 490 U.S. at 327. A complaint or portion thereof, will be dismissed for failure to state a claim
6 upon which relief may be granted if it appears the “[f]actual allegations . . . [fail to] raise a right
7 to relief above the speculative level, on the assumption that all the allegations in the complaint
8 are true.” See *Bell Atlantic, Corp. v. Twombly*, 127 S.Ct. 1955, 1965 (2007) (citations omitted).
9 In other words, failure to present enough facts to state a claim for relief that is plausible on the
10 face of the complaint will subject that complaint to dismissal. *Id.* at 1974.

12 Although complaints are to be liberally construed in a plaintiff’s favor, conclusory
13 allegations of the law, unsupported conclusions, and unwarranted inferences need not be
14 accepted as true. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). Neither can the Court
15 supply essential facts that an inmate has failed to plead. *Pena*, 976 F.2d at 471 (quoting *Ivey v.*
16 *Board of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982)). Unless it is absolutely
17 clear that amendment would be futile, however, a pro se litigant must be given the opportunity to
18 amend his complaint to correct any deficiencies. *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir.
19 1987).

21 To state a claim under 42 U.S.C. § 1983, a complaint must allege that (1) the conduct
22 complained of was committed by a person acting under color of state law and that (2) the
23 conduct deprived a person of a right, privilege, or immunity secured by the Constitution or laws
24 of the United States. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), overruled on other grounds,
25 *Daniels v. Williams*, 474 U.S. 327 (1986). Section 1983 is the appropriate avenue to remedy an

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1 alleged wrong only if both of these elements are present. *Haygood v. Younger*, 769 F.2d 1350,
2 1354 (9th Cir. 1985), cert. denied, 478 U.S. 1020 (1986).

3 In his complaint, Plaintiff alleges during his transfer from the Washington Corrections
4 Center (WCC) to the Coyote Ridge Corrections Center (CRCC), a dental device valued at
5 \$880.00 that was in his property before he left WCC, was not included in the property that was
6 transported with him to CRCC. ECF No. 1, p. 4. Plaintiff alleges that Plaintiff Baker signed the
7 property inventory slip stating that everything marked on the slip was present and in the property
8 bag. However, Plaintiff Baker placed all of his property in one bag despite a rip and despite
9 Plaintiff's concern that the bag was too small. *Id.* The bag broke open several times during the
10 transport and when it arrived at the CRCC, Plaintiff was given his dental cup, but the device was
11 missing. After a search, St. Jackson told Plaintiff that his property could not be found and that
12 he should file a tort claim for his loss. *Id.*, p. 5. Plaintiff grieved his loss and filed a tort claim.
13 The tort claim was denied. *Id.*

14 As currently plead, Plaintiff's complaint is subject to *sua sponte* dismissal under 28
15 U.S.C. § 1915(e)(2)(B)(ii). Neither the negligent deprivation of property nor the intentional
16 deprivation of property states a claim under Section 1983 provided the deprivation was random
17 and unauthorized. *See Parratt v. Taylor*, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981),
18 *overruled in part of other grds*, *Daniels v. Williams*, 474 U.S. 327, 330-31, 106 S.Ct. 662, 664,
19 88 L.Ed.2d 662 (1986) (state employee's negligent loss of prisoner's hobby kit did not state
20 claim); *Hudson v. Palmer*, 468 U.S. 517, 104 S.Ct. 3194, 82 L.Ed.2d 393 (1984) (intentional
21 destruction of inmate's property did not state claim). The availability of a state tort action to
22 remedy such losses precludes relief under Section 1983 because it provides adequate procedural
23 due process and therefore no constitutional right has been violated. *King v. Massarweh*, 782
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1 F.2d 825, 826 (9th Cir.1986). Under Washington law, prisoners may avail themselves of the
2 DOC grievance process and/or file tort claims against the state for the unlawful loss or
3 destruction of their personal property. *See* RCW 72.02.045 (state and/or state officials may be
4 liable for the negligent or intentional loss of inmate property) and RCW 4.92.090 (state liable for
5 the tortuous conduct of state officials). A prisoner does not have a right to a specific grievance
6 procedure, as long as it is adequate, so that a defendant merely ruling against an inmate's
7 grievance does not contribute to the underlying alleged deprivation. *See Gallaher v. Shelton*,
8 587 F.3d 1063, 1069 (10th Cir.2009).

10 Here, Plaintiff alleges that he has availed himself of the prison's grievance procedure and
11 that he had an opportunity to file a tort claim in state court for deprivation of his property.
12 Therefore, he has not stated a claim that is cognizable under 42 U.S.C. § 1983 because a state
13 tort action was available. Even though Plaintiff's tort claim was denied, he was provided
14 adequate due process and therefore, no constitutional right has been violated.

16 Due to the deficiencies described above, the Court will not serve the complaint.
17 However, Plaintiff shall be given an opportunity to file an amended complaint to cure, if
18 possible, the deficiencies identified by the Court. Plaintiff shall set forth his factual allegations
19 in separately numbered paragraphs and shall allege with specificity the following:

20 (1) the names of the persons who caused or personally participated in causing the
21 alleged deprivation of his constitutional rights;

23 (2) the dates on which the conduct of each Defendant allegedly took place; and

24 (3) the specific conduct or action Plaintiff alleges is unconstitutional.

25 An amended complaint operates as a complete substitute for (rather than a mere
26 supplement to) the present complaint. In other words, an amended complaint supersedes the

1 original in its entirety, making the original as if it never existed. Therefore, reference to a prior
2 pleading or another document is unacceptable – once Plaintiff files an amended complaint, the
3 original pleading or pleadings will no longer serve any function in this case. *See Loux v. Rhay*,
4 375 F.2d 55, 57 (9th Cir. 1967) (as a general rule, an amended complaint supersedes the prior
5 complaint). Therefore, in an amended complaint, as in an original complaint, each claim and the
6 involvement of each defendant must be sufficiently alleged.
7

8 Plaintiff shall present his complaint on the form provided by the Court. The amended
9 complaint must be legibly rewritten or retyped in its entirety, it should be an original and not a
10 copy, it may not incorporate any part of the original complaint by reference, and it must be
11 clearly labeled the “Amended Complaint” and must contain the same cause number as this case.
12 Plaintiff should complete all sections of the court’s form. Plaintiff may attach continuation
13 pages as needed but may not attach a separate document that purports to be his amended
14 complaint. In order to make a short and plain statement of claims against the defendants,
15 plaintiff should include factual allegations that explain how each named defendant was involved
16 in the denial of his rights. The Court will screen the amended complaint to determine whether it
17 contains factual allegations linking each defendant to the alleged violations of Plaintiff’s rights.
18 The Court will not authorize service of the amended complaint on any defendant who is not
19 specifically linked to the violation of Plaintiff’s constitutional rights.
20

21 Accordingly, it is **ORDERED**:

22 (1) If Plaintiff decides to file an amended civil rights complaint in this action, he shall
23 do so **on or before October 7, 2011**. Plaintiff is cautioned that if the amended complaint is not
24 timely filed or if he fails to adequately address the issues raised herein on or before **October 7**,
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2011, the Court will recommend dismissal of this action as frivolous pursuant to 28 U.S.C. § 1915.

(2) The Clerk is directed to send to Plaintiff the appropriate form for filing a 42 U.S.C. 1983 civil rights complaint, a copy of this Order and a copy of the General Order.

DATED this 12th day of September, 2011.

Karen L. Strombom
Karen L. Strombom
United States Magistrate Judge